It is, therefore, very interesting to find that in a recent case, *Prall* v. *Burckhartt*, 132 N. E. 281, the supreme court of Illinois expressly sustains the Vacation Act as to streets subsequently dedicated: "The provisions of the Plat Act and the Vacation Act heretofore referred to were both then in force and must be construed *in pari materia*, and it would seem to follow that appellee, in making and recording the plat of 1889, must be held to have done so in contemplation not only of the Plat Act but also of the Vacation Act." The court did not find it necessary in *Prall* v. *Burckhartt* to overrule earlier cases dealing with dedications made prior to the Vacation Act, but the whole of the opinion would indicate that the court is prepared to overrule them; it dilates upon the fact that the rule of *stare decisis* is based on expediency and should not be allowed to outweigh greater evils which will result from continuing in force an erroneous rule of law; it argues emphatically the impolicy of the view which gives the vacated street to the original platter; and says that a mere possibility of reverter is not property within the scope and meaning of the due process clause. (Compare cases sustaining statutes which alter or abolish existing inchoate dower rights, TIFFANY, § 230). But whether or not the earlier cases still hold in regard to dedications made before the Vacation Act, there can certainly be no objection to the decision of *Prall* v. *Burckhartt* on its facts; it brings the law of Illinois into harmony with the rules prevailing in all other jurisdictions. B. S.

"UNFAIR METHODS OF COMPETITION"—THE FEDERAL TRADE COMMISSION ACT.—"Unfair methods of competition in commerce are hereby declared unlawful." 38 Stat. L. 717. This is the vital portion of the Federal Trade Commission Act. The discussions in the United States Senate attendant upon the passage of this measure reveal that there was scarcely any agreement among its supporters as to what the words "unfair methods of competition" meant. Apparently the only harmony in the expressed views was that the term used was to have a broader significance than the expression "unfair competition" had at common law. 25 YALE L. J. 20. This lack of agreement precluded a resort to the Congressional proceedings as an aid to interpreting the statute, further, perhaps, than to find an intent to broaden the conception of unfair trade at common law. Indeed, what authoritative comment there was was equally as indefinite as the final enactment. Put forth into a field where the common law was at best uncertain and still in a formative stage, there is little wonder that those authorities who ventured to express an opinion upon the meaning of the statute, quite as uncertain, should have been in marked disagreement. While the conception of what was unfair in competition for quite some time had been narrow, being limited to cases of "passing off," later cases extended the doctrine so much that it is safe to say that without the aid of the present statute the courts would soon have arrived at the stage where they now are with its assist-

ance. See *International News Service* v. *Associated Press,* 248 U. S. 215; 20 COL. L. REV. 328.

"The words 'unfair methods of competition in commerce' include little if anything more than the words 'attempt to monopolize' as used in section two of the Sherman Act." HARLAN AND MCCANDLESS, FEDERAL TRADE COMMISSION, § 26. Another view includes this, and also unfair competition as defined in the more orthodox common law decisions. 19 COL. L. REV. 266, note 2, where both ideas are rebutted. "The law itself is mainly declaratory of a new ethical code in business dealings." HARVEY AND BRADFORD, MANUAL OF FEDERAL TRADE COMMISSION, 134. "It [this act] was intended to prohibit and prevent those classes of acts which, for want of a better term, may be described as economically unfair. In an economic sense, fair competition signifies a competition of economic and productive efficiency." STEVENS, UNFAIR COMPETITION, pp. 4 and 5. Sufficient decisions have been rendered by the federal courts to justify the statement that none of these views has been followed by them.

In 63 THE ANNALS 3, a writer advances this: "No unfair or dishonest practice will long survive the condemnation of men engaged in that trade. The men engaged in business make the rules of the game, legislatures and courts to the contrary notwithstanding. The most that legislative bodies can do is to write into statute law more or less imperfectly what the great body of business men regard as the approved rules of practice among intelligent and high-minded business men." The cases decided under the Federal Trade Commission Act indicate that the federal courts have taken cognizance—more or less unconsciously, it is true—of "what the great body of business men regard as the approved rules of practice among intelligent and high-minded business men" written into statute law more or less imperfectly by the national Congress. Confronted with a statute without ambiguity in the true sense of the term, but unquestionably vague and indefinite, and deprived of any helpful extraneous aid to interpret it, the courts have given it a meaning not differing from the natural meaning of the words "unfair methods of competition," agreeably to approved standards of statutory construction. *United States* v. *Col. & N. W. R. Co.,* 157 Fed. 321. If these words have a natural meaning, it would include those practices which a business man of morality and intelligence would condemn. Many practices approved by him as fair and moral would undoubtedly violate the better rules of economics, and would be denominated "economically unfair." Most practices which would naturally lead to monopoly it is believed the same individual would instinctively condemn, likewise those that were denominated unfair at common law. This conception includes, but is broader than, all those which the authorities cited above suggest, save that from STEVENS, UNFAIR COMPETITION, and HARVEY AND BRADFORD, MANUAL OF FEDERAL TRADE COMMISSION. What the business sense of the quality of any competitive act is it is of course a matter of evidence to prove; many cases are to be found in which the courts have taken judicial notice, apparently, of the moral worth of trade practices, as viewed by men of business. See *N. J.*

Asbestos Co. v. *Federal Trade Commission, infra.* To save from the charge of inconsistency, it should be remarked that while the statute is referred to above as being vague and indefinite, and then later it is said that it has a clear meaning, that latter statement is to be taken in the light of the decisions rendered under the act. Moreover, paradoxical as it may seem, words which are in common legal use may be both clear and indefinite—clear in the subjective sense, but incapable of any exact and comprehensive definition in other words. The terms "reasonable doubt" and "fraud" are examples.

The following decisions are not inconsistent with the views expressed. In *Federal Trade Commission* v. *Gratz,* 253 U. S. 421, a dealer in steel ties used for bundling bales of cotton manufactured by a certain company refused to sell them unless the purchaser bought a certain proportional amount of jute bagging, used to wrap bales of cotton, which was manufactured by another company. In refusing to classify this as an unfair method of competition, the court said: "The words 'unfair methods of competition' are not defined by the statute and their exact meaning is in dispute. They are clearly inapplicable to practices never heretofore regarded as opposed to good morals, because characterized by deception, bad faith, fraud or oppression, or as against public policy because of their dangerous tendency unduly to hinder competition or created monopoly. *The act was certainly not intended to fetter free and fair competition as commonly understood and practiced by honorable opponents in trade.*" In *Curtis Publishing Co.* v. *Federal Trade Commission,* 270 Fed. 881, the publishing company distributed its publications to the public through a selling organization composed of distributing agents and salesboys, the latter selling to the public the periodicals received from the distributing agents. These agents agreed not to wholesale the periodicals of other publishers without the consent of the Curtis Publishing Company. This was held not to be an unfair method of competition. In discussing this phrase, this language is used: "Indeed, in the nature of things, it was impossible to describe and define in advance just what constituted unfair competition, and in the final analysis it became a question of law, after the facts were ascertained, whether such facts constitute unfair competition in business, *for the test of fairness, as of fraud, is the application by the law of moral standards to the actions of men.*" (Italics in both quotations are the writer's.) Again, in *N. J. Asbestos Co.* v. *Federal Trade Commission,* 264 Fed. 509, the facts were that a manufacturing company made a practice of entertaining employes of its customers with liquors, cigars, meals, theater tickets, etc. Since this method of promoting business had been an "incident of business from time immemorial," it was concluded that it was not a method of unfair competition.

One of the latest pronouncements upon this subject is found in *Kinney-Rome Co.* v. *Federal Trade Commission,* 275 Fed. 665. A manufacturer gave premiums to salesmen of retailers, with their knowledge and consent, to induce their salesmen to push the sale of the manufacturer's goods. The Federal Trade Commission conceived this to be unfair. It was held to be otherwise in the circuit court of appeals. There must be some fraud in

trade injuring a competitor or lessening competition before a trade practice can be considered as unfair. Since the retailer acquiesced in the practice, it was equivalent to his act. Competitors of the manufacturer could not complain, because any plan to advance the sale of one kind of goods and to keep back another was a matter wholly within the control of the merchant. The public's interest was in competition among merchants, not in competition among goods in any one merchant's shop. If there was any tendency on the part of clerks to take extreme measures to induce the public to purchase these particular goods, this was what the public expected of every merchant whose interest it might be to develop the sale of one class of goods in preference to another. While no attempt was made to define "unfair methods of competition," the attitude of the court seems to be that of a dealer whose competitor adopts an internal trade policy to promote the sale of a certain commodity, and who would not denounce such tactics as unfair or immoral, but would recognize in them a shrewd bit of business, to be met by increased competitive effort on his part,—a rational construction of the statute, giving the terms used their natural meaning. What was allowed here was economically unfair, in that there was no competition of productive efficiency. If effective in increasing the sales of the manufacturer's product, this practice might also tend to monopoly, if financially weaker competitors could not meet this kind of competition. This decision gives little support to the "economically unfair" and the "attempt to monopolize" constructions. In *Western Sugar Refining Co.* v. *Federal Trade Commission,* 275 Fed. 725, a conspiracy among jobbers to prevent manufacturers from selling directly to a wholesaler was condemned as unfair. "Unfair methods of competition" naturally embraces this method of seeking commercial advantage. In *Sears, Roebuck & Co.* v. *Federal Trade Commission,* 258 Fed. 307, a mail order house doing an interstate business was restrained from advertising that it had obtained special price concessions and could sell much cheaper than its competitors, and that it purchased selected brands of certain commodities from abroad. Both of these representations were false. The deception practiced on the public and the discredit cast upon competitors influenced the court to make this decision. This was clearly a case where a business man of integrity (though such advertising has been not unusual) would call such tactics unfair. In commenting upon the act the court said: "On the face of the statute the legislative intent is apparent. The commissioners, representing the government as *parens patriae,* are to exercise their common sense, as informed by their general idea of unfair trade at common law, and stop all those trade practices that have a capacity or tendency to injure competitors directly or through deception of purchasers, quite irrespective of whether the specific practices in question have been denounced in common law cases." Apparently it is not intended to limit the operation of the act to a condemnation of practices known as unfair at common law, but merely to use that as a starting point, or a minimum, and to extend the act to embrace any methods of competition that a natural construction will permit. If the orthodox

rule of the common law of unfair trade is referred to as being the standard of interpretation to be used in construing the act, the methods employed would not constitute unfair practice. NIMS, UNFAIR BUSINESS COMPETITION, § 14. If the idea of unfair competition at common law is as expressed by way of *dictum* in *Associated Press* v. *International News Service*, 245 Fed. 244, that an act that is immoral is usually unfair, this is in accord with the underlying theory of the cases decided under the act, but it is not in harmony with the common law understanding of unfair competition.

One decision is apparently in conflict with this view—*Winsted Hosiery Co.* v. *Federal Trade Commission*, 272 Fed. 957. A manufacturer of underwear, shirts and hosiery labeled these articles as composed of "wool" and "merino" when they contained much cotton. The common law conception of unfair trade was applied to these acts, and according to the court's theory there was nothing unfair practiced upon competitors, and an injunction was denied. This action might be regarded as unfair competition at common law, because it enabled the sale of the inferior as the superior article, engendering an unequal competition, since the truthful trader selling the genuine article, or the truthful trader selling the same article that the defendant sold, labeled correctly, could not attempt to compete with him on a basis of equality. It is not far removed from the practice of "passing off" and what was condemned in *International News Service* v. *Associated Press*, *supra*. It was also said that the act was conceived to be designed for the purpose of protecting competitors and not the public. In holding that the act was not intended to protect the public, this decision is at variance with all other decisions under the act, especially *Federal Trade Commission* v. *Gratz*, 258 Fed. 314, holding that the commission is to interpose only in the interest of public. As this controlled the decision, it cannot be taken as seriously opposed to the cases, *supra*, on the question as to what constitutes unfair competition within the meaning of the statute.

However the results achieved by the courts in interpreting the statute may have differed from the intention which Congress wished to express in enacting the measure, the interpretation given it by the courts is sound from a legal point of view. If the Congress is disappointed in the trend of the decisions, it must express itself more explicitly. G. E. L.